

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Nike, Inc.,

Plaintiff,

-against-

Lululemon USA Inc.,

Defendant.

23-CV-771 (AS)

ORDER

ARUN SUBRAMANIAN, United States District Judge:

First, for the reasons stated on the record at the hearing held on December 19, 2024:

- Nike’s motion for partial summary judgment is DENIED.
- Lululemon’s motion for summary judgment is DENIED.
- Lululemon’s motion to exclude the testimony of Chris Pastore is GRANTED as to the toothpick test and testimony about “Flyknit technology,” and otherwise DENIED.
- Nike’s motion to exclude the testimony of David S. Brookstein is GRANTED as to opinions on non-infringement concerning “practicing the prior art” and the modified toothpick test, and otherwise DENIED.

Second, by **December 30, 2024 at 5:00 PM**, the parties should submit letters less than five pages each on construction of the phrase “surrounding textile structure.”

Third, in accordance with Paragraph 10 of the Court’s Individual Practices for Civil Cases (available at <https://nysd.uscourts.gov/hon-arun-subramanian>):

- No later than **February 3, 2025, at 5:00 PM**, the parties shall email to the Court a PDF of the proposed joint pretrial order (described in Paragraph 10.A of the Court’s Individual Practices). The proposed joint pretrial order should also be filed on ECF.
- No later than **February 3, 2025, at 5:00 PM**, each party shall file and serve all other required pretrial filings. This includes motions addressing any evidentiary issues or other matters that should be resolved *in limine*, joint requests to charge, joint proposed verdict forms, and joint proposed *voir dire* questions.
- No later than **February 3, 2025**, the parties shall provide to the Court an electronic copy of each exhibit sought to be admitted (with each filename corresponding to the relevant exhibit number — e.g., “PX-1,” “DX-1,” etc.) on a flash drive.¹ The parties

¹ If submission of electronic copies would be an undue burden on a party, the party may seek leave of Court (by letter-motion filed on ECF) to submit prospective exhibits in hard copy. Each hard copy shall be pre-marked with an exhibit

shall also e-mail the Court a Microsoft Word document listing all exhibits sought to be admitted. The list shall contain four columns labeled as follows: (1) "Exhibit Number"; (2) "Description" (of the exhibit); (3) "Date Identified"; and (4) "Date Admitted." The parties shall complete the first two columns, but leave the third and fourth columns blank, to be filled in during trial.

- No later than **February 12, 2025, at 5:00 PM**, the parties shall file, if necessary, any opposition to any motion *in limine*; and any opposition to any legal argument in a pretrial memorandum.


It is FURTHER ORDERED that counsel for all parties shall appear for a final pretrial conference on **February 19, 2025, at 3:00 PM**, in **Courtroom 15A** of the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, New York.

Unless the parties file a stipulation of dismissal or settlement, the parties should be prepared to go to trial as scheduled. **The trial date will not be adjourned on account of a settlement in principle.**

The Clerk of Court is respectfully directed to terminate the motions at Dkt. 138, 146, 152, 154, 206, 219, 220, 230, and 231.

SO ORDERED.

Dated: December 20, 2024
New York, New York


ARUN SUBRAMANIAN
United States District Judge

sticker and assembled sequentially in a loose leaf binder (not to exceed 2 1/2 inches in thickness) or in separate manila folders labeled with the exhibit numbers and placed in redweld folders labeled with the case name and docket number.